

## Administrative justice in Wales

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## **OMBUDSMAN, TRIBUNALS AND ADMINISTRATIVE JUSTICE SECTION**

### **Administrative justice in Wales: a new egalitarianism?**

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#### **ABSTRACT**

Administrative justice systems are under a variety of pressures, in particular austerity inspired civil justice reform. I argue that such pressures do not necessitate the decline of administrative justice, and that a developing Welsh model has cross-jurisdictional appeal, especially to legal orders currently lacking a relevant organisational centre and joined-up approach. I examine the efficacy of existing conceptions of administrative justice and delineate a developing Welsh approach grounded in egalitarian principles. The nascent Welsh model emphasises reforming administrative justice hierarchies so that they work harmoniously with regulatory and value-promoting parts of the system, focusing on user perspectives, and tackling the risks of less transparent forms of bureaucratic decision-making.

#### **KEYWORDS**

Wales, Devolution, Administrative Justice, Conceptions, Egalitarian

#### **Introduction**

Common-law administrative justice systems have largely grown up ad hoc in response to contemporary problems in public administration (Hare 1995), pressure from influential legal and political elites (Sterett 1997) and government policy priorities (Thomas 2016). There are models that could be established were the slate of history entirely clean, but such is unlikely to be the case. The nation that has brought us the world's best quality slate, Wales of course, is at a key stage in the emergence of its own distinctive administrative justice system, providing a case-study with lessons for other jurisdictions. Slate cannot be created in isolation; it morphs from existing features under pressure and heat. So too an administrative justice system. Current pressures are forging new attributes to administrative justice across the common-law world. These pressures include; austerity, modernising civil justice, political and constitutional changes (shrinking the state, new forms of nationalism and resultant mistrust in globalised values), evolving visions of what citizens expect in their interactions with state bureaucracies, and disbanding of bodies such as the Administrative Justice and Tribunals Council (AJTC) and Australian Administrative Review Council, notable for their pursuit of 'holistic' administrative justice. I argue that this does not necessitate the decline of administrative justice, and that a developing Welsh model has cross-jurisdictional appeal, especially to legal orders currently lacking a relevant organisational centre and joined-up approach. I examine the efficacy of existing conceptions of administrative justice, moving then to delineate a developing Welsh approach grounded in egalitarian principles. The nascent Welsh model also emphasises reforming administrative justice hierarchies so that they work harmoniously with regulatory and value-promoting parts of the system, focusing on the user perspective, and tackling the risks of less transparent forms of bureaucratic decision-making.

#### **Constitutional context**

The first phase of Welsh devolution was primarily executive. However, the Government of Wales Act 2006 gave a redefined National Assembly for Wales (the Assembly) powers to enact

laws, known as Measures, in fields which could be conferred piecemeal under Legislative Competence Orders negotiated between Welsh Ministers and the UK Government and confirmed by the UK Parliament. The 2006 Act also provided for the Assembly to gain power to pass Acts (instead of Measures) in subject areas (instead of fields), with scope for subordinate legislation to expand competence; a move triggered by a 2011 referendum.

Whilst there has been no formal devolution of responsibility for ‘justice’, the Assembly and Welsh Government have responsibility for most public administration and this means that many aspects of administrative justice are devolved. At the time of writing the Assembly has competencies to make laws in 21 subjects, primarily concerning the relationship between citizens and the state (under the 2006 Act Part 4 and Schedule 7). Alongside these competencies the Assembly and Welsh Government have developed redress mechanisms to ensure that laws are enforced and maladministration is addressed.

Since the Sixteenth Century the public law of Wales has been the public law of England and Wales (Gardner 2016), meaning that both the law made by the UK Parliament that only affects England and the law made by the Assembly that only affects Wales are parts of the law of England and Wales. Section 108 of the 2006 Act provides that an Assembly Act applies to Wales, but extends over England and Wales. This gives courts in Wales and England authority to enforce Welsh laws, thus maintaining a unified legal jurisdiction for the time being.

The St David’s Day announcement (UK Government 2015) recommended that Wales move to a ‘reserved powers’ model. The subsequent draft Wales Bill 2015 was criticised because it appeared to roll-back legislative competencies already devolved (Wales Governance Centre and the Constitution Unit 2016). Its logic and consistency were questionable especially given its format of amending the existing conferred powers model rather than starting afresh; this also perpetuates the legacy of executive devolution. Welsh Government responded by producing its own Government and Laws in Wales Bill; this set out a vision for a more long-lasting settlement for Wales, with a clearer divide between respective competencies and a set of deferred matters, including ‘justice’ to be devolved from 1 March 2026. This setting out the direction of travel also included provisions for the immediate recognition of a distinct Welsh legal jurisdiction, and for moves towards establishing a separate legal jurisdiction in the longer-term (Welsh Government 2016a). At the time of writing, the revised Wales Bill 2016 attempts to deal with these concerns by rationalising some reservations and reducing the legal hurdles that must be surmounted to establish Assembly legislative competence. However, it still lacks a coherent set of constitutional principles underpinning the division of reserved and non-reserved powers and does not fully address the issue of a distinct or separate Welsh legal jurisdiction; it refers instead to a distinct body of Welsh law. As it stands it is not a clear and accessible piece of legislation and could complicate and thereby prolong the process of enacting law applicable in Wales. This seems particularly disappointing at a time when other innovative steps have been suggested to improve the form and accessibility of such law. The Law Commission has recommended the consolidation of some existing Welsh law, and the potential codification of entire areas of law, as realistic options for making Welsh law more accessible as it increasingly differs from law applicable in England and Wales, and in England alone (Law Commission 2016). For the time being it can be said that there are some distinctive features of the Welsh jurisdiction, but this does not necessarily render it a distinct legal jurisdiction; the Assembly may indeed be the ‘only’ primary legislature without a legal jurisdiction. An important point to note, especially for readers from other jurisdictions, is that however the Welsh ‘jurisdiction’ is classified (e.g. emergent, distinctive, distinct) it is not a small legal jurisdiction on a global scale. Rather England and Wales is a particularly large jurisdiction.

## **Conceptualising administrative justice**

Despite continued wrangling over political recognition of a separate Welsh jurisdiction and the potential for ‘justice’ functions to be further devolved, many, perhaps even most, aspects of administrative justice already operate on a distinctly Welsh basis, therefore catalysing the development of a Welsh *conception*.

In this regard, *concepts* function as mediating devices between the real world and our understanding of it by constituting an attempt to render explicit what is already implicit in our common understanding of a social practice. They are often presented at a broad and abstract level and are hard to disagree with. By way of example, Adler’s concept of administrative justice is that it is ‘the justice inherent in administrative decision-making’ (Adler 2003).

*Conceptions* refine *concepts*; they enable us to see in detail how an abstract ideal plays out in certain circumstances within a polity (Dworkin 1998, pp.70–71 and 90–96; Nason 2016, Chs.1 and 9). Traditional *administrative law* conceptions of administrative justice are associated with the specific qualities of administrative law, looking from the ‘top down’ focusing on the decisions of senior courts and to a lesser extent those of tribunals and ombudsmen. On the other hand, *justice in administration* conceptions are concerned with the day-to-day activities and decisions of public bodies. Nowadays these conceptions are largely seen as complementary. But it is telling that a past Welsh tendency towards a narrower *administrative law* conception (Nason 2015, para 2.14) has led to common perceptions of administrative justice being seen either as a matter for tribunals and courts alone, or as a matter of public administration rather than of justice *per se*. This has meant that the significance of certain bodies such as Commissioners, to the broader evolution of justice in Wales has not always been appreciated.

Part of this limited awareness is likely due to the longer-term lack of a justice function within Welsh Government. A Justice Policy Team was established in 2014, but with only four staff it is already stretched. The Lord Chief Justice of England and Wales has argued that a ‘dedicated justice function’, either provided by the Ministry of Justice or devolved, is a matter of priority, ‘to enable legislation to operate effectively’ (Judiciary of England and Wales 2016). A Report by Cardiff University recommended creating a Ministry of Justice ‘Welsh Centre of Expertise’ (Wales Governance Centre 2016). In its ‘Legacy Report’, the Committee for Administrative Justice and Tribunals Wales (CAJTW) recommended that, ‘the Justice Policy capability of the Welsh Government be further expanded to promote greater consistency across all policy areas’ (CAJTW 2016, recommendation 17).

### *Understanding the culture of administrative justice*

Administrative justice has a cultural dimension, and a fruitful direction for improving our understanding is to consider how to shift conceptions of the subject matter away from the limited cultures with which it has hitherto been associated (Douglas 1978).

Halliday and Scott have produced a cultural typology of administrative justice based on Grid-Group theory (Halliday and Scott 2010). These dimensions reflect the answers to two questions; ‘who am I?’ (Group) and ‘how should I behave?’ (Grid). This leads to the production of four models of cultural bias that are pluralistic but exhaustive extremes of social life. A cultural bias colours every aspect of one’s life; in this case views about the justness of one’s interaction with state bureaucracies.

A Bangor Report on Welsh Administrative Justice suggests that so-called *fatalist* and *hierarchical* cultures are significant in Wales (Nason 2015, para 2.15–2.17). *Fatalism* is associated with citizens feeling constrained and controlled by societal norms and issues of rank, role and status. There is a sense of powerlessness which plays out in limited challenges to public decision-making. Such a culture within Wales stems from the historical notion of public servants as superiors. Some evidence for this includes that judicial review claims per head in Wales are lower than in the English regions; the same may be true of other redress mechanisms,

though no large-scale analysis has been conducted (Nason 2015, pp. 104–111). There is a risk that underlying *fatalism* could lead to reduced public confidence in administrative justice, yet formally the public sector remains wedded to a *hierarchical* approach. Under this latter conception there is respect for the authority and expertise of public decision-makers finding expression in a *bureaucratic* form of administrative justice based on following rules set down by superiors with limited room for discretion.

Other cultural set-ups are available. For instance, a more *egalitarian* culture could be understood as one of partnership between public decision-makers and citizens, with an enhanced focus on the fair treatment of individuals. In an *egalitarian* culture, the citizen is a partner in the decision-making process and there is less deference to specialist expertise. This culture privileges decision-making by consensus and seeks to equalise the position of all those in the relevant group; achievement of which requires a high degree of citizen participation. However, it is not without risks; whereas *fatalists* feel powerless in the face of bureaucracy, *egalitarians* may be positively distrustful of authority and expertise (Thompson, Ellis and Wildavsky 1990). *Egalitarians* can exploit the presence, or perceived presence, of a large body of *fatalists*, seeking to de-stabilise established *hierarchies* without any comprehensible alternatives to replace them (see Brexit, the rise of UKIP in Wales, and the ‘Trump’ phenomenon as examples of this). There is then ideally some counterpoint where *fatalists* become more engaged, and the degree of consensus between officials and citizens improves by reforming established *hierarchies* rather than dismantling them. The challenge in Wales, and elsewhere, is to design processes that facilitate this engagement.

#### *The poor fit of traditional conceptions of administrative justice*

Whilst Wales demonstrates examples of Mashaw’s familiar tripartite analysis – *bureaucratic rationality*, *professional judgement*, and *value defining* approaches (Mashaw 1983) – there is a less easy relationship with *marketized* accounts of administrative justice.

Given *New Public Management* (NPM) models of public administration, Adler proposed three further conceptions of administrative justice (Adler 2003). *Managerialism* gives autonomy to public sector managers who bear the responsibility for achieving prescribed standards of service in an efficient way, in return they are subject to performance audit and performance management indicators. *Consumerism* is a model more focused specifically on the individual citizen subject to administrative decision-making. The system revolves around consumer satisfaction. Public bodies should be responsive to citizen dissatisfaction and levels of service are defined and ensured by documents such as consumer or customer charters. Within Adler’s *marketization* model the focus is not just on the citizen as a consumer, but also as a customer with a choice between competing services. The public body is accountable to the citizen not through the citizen’s engagement, but to the market itself with the possibility of the citizen-customer defecting to another provider.

Whilst Adler sees the NPM conceptions as distinct, if inter-acting accounts, Halliday argues that managerial autonomy, citizens or consumer charters, and the marketization of public services are part of the same whole and thus cannot exist, or at least cannot function effectively, in the absence of one constituent element (Halliday 2004). This view may cause problems for Wales where it could be said that *managerialism* and *consumerism* are embraced whilst *marketization* is rejected. The Williams Commission on Public Services in Wales noted, ‘...in Wales, public service delivery is driven by accountability and dialogue, not consumer choice’ (Williams 2014, para 4.10). The Welsh model for improving performance relies implicitly on scrutiny, accountability and engagement mechanisms rather than on consumer choice; ‘in the absence of a market model continuous improvement must be driven through effective performance management and improved regulation’ (Williams 2014, para 1.43). The Welsh state sector is bigger when compared with England and Scotland, and the inapplicability of a

*marketization* model implies that there is less choice. The lack of relevant choice underscores the need for appropriate mechanisms through which public decision-making can be challenged. This makes the ombudsman function and its placement between citizen and state especially important.

Whilst Wales largely rejects *marketization* in devolved administrative justice, recent austerity policies and new forms of *marketization* and related professionalism are leading to some re-crafting of decision-making in the largest non-devolved area, the social welfare context. Many countries have instigated reforms whereby lower governmental bodies (e.g., municipalities, regional, local and devolved authorities) have been given more powers over policy development, and more discretion in individual cases, in the domain of social welfare. A rationale for this is that such bodies are more easily influenced by financial incentives; increasing their powers and responsibilities ties-in with austerity politics and the related subsequent use of market mechanisms to realise welfare policy objectives. Even where decision-making remains ultimately the responsibility of central government (as it does with most social welfare decisions in the UK), the background of cost-cutting leads to the same broad consequence, namely the growth of often mandatory but informal initial assessments and mandatory administrative review, with either or both being undertaken by a private contractor.

Despite some Welsh rhetoric, market mechanisms are utilised in the devolved social welfare context. In 2013 discretionary payments under the Social Fund (created by the Social Security Act 1986) were abolished and replaced by a new scheme under which payments to meet special needs (primarily of claimants receiving means tested benefits) would become the responsibility of local authorities. In Wales the relevant Discretionary Assistance Fund (DAF) is administered by a private contractor (Northgate Public Services). Dissatisfied claimants must first seek an internal review by the DAF team. If sought, a second stage review will be determined by the Family Fund Trust (a UK wide charity). CAJTW recommended that Welsh Government provide more widely available information about this scheme and that Ministers consider whether onward appeals ought to be transferred to the Public Services Ombudsman for Wales (PSOW) (CAJTW 2016, recommendation 31). Welsh Government responded that feedback suggests the existing appeals process works well. The DAF falls within the jurisdiction of the PSOW with respect to complaints. On the other hand, the Scottish Public Services Ombudsman (SPSO) has jurisdiction to conduct an independent review of decisions made under the Scottish Welfare Fund; this is more akin to an appeal than a complaint and represents an evolution of the traditional ombudsman function (Nason 2015, p. 61).

It is arguable that such developments in the administration of social welfare call for a new species of *professional judgement*, ensuring that decision-making is centred on the specific case, reducing bureaucracy and increasing the professional discretion of the initial decision-maker. This has positive connotations, but when coupled with the need to save resources it has sometimes tended to result in stricter assessments and negative outcomes for applicants. It may be that the ambitions of *professional judgement* have turned out to be a bureaucratic design aimed at realising organisational goals. This suggests a return to a *bureaucratic rationality* culture with an austerity policy goal that suits the centralised state and market providers (Tollenaar 2017). These concerns should not lead us to be hyper-critical of administrative review processes, they are intended to be quick, cheap and simple, and as such beneficial to the individual applicant and the public body. That said, a range of studies conclude that despite the goal of simplicity, applicants fare better when legally represented even where the relevant regime has been designed specifically so that representation is not required. Recent research has found that this 'representation premium' is no longer evident in some contexts, but that representation in internal administrative review has an impact on the general standard of initial decisions by feeding back positively onto the quality of ongoing decision-making (Cowan et al forthcoming).

The contribution of tribunals also seems no longer to fit as comfortably within traditional conceptions of administrative justice. The two-tier structure created under the Tribunals, Courts and Enforcement Act (TCEA) 2007 cemented the role of tribunals as judicial institutions, but this also led to a loss of government control. Thomas argues that this has prompted government to introduce reforms to reduce the number of cases passing out of its control and to cut costs; an initiative that has been exacerbated by austerity policies (Thomas 2016). When this is coupled with political motivations towards eroding or abolishing appeal rights, the areas that have produced the most tribunal appeals – social security and immigration – have, to an extent, been de-tribunalised.

Thomas argues that under what can now be considered as an ‘old’ model, tribunals were primarily concerned with dispute resolution under processes that could be described as ‘quasi-judicial’. In general, paper-based systems were used for assembling case files and there was potential for oral and paper appeals with some legal aid available. Higher courts oversaw the operation of ‘inferior’ tribunals and judicial review by the Administrative Court was more widely available, whilst government made little or no effort to learn from tribunal decisions. Under a ‘new’ model, tribunals become as much concerned with dispute containment and avoidance as with dispute resolution, and government takes more responsibility for the right first time agenda by incorporating tribunal feedback. There is increasing use of ICT and online processing of appeals, with oral, paper and online appeal processes. The relationship between the Administrative Court and tribunals alters and the higher courts recognise the Upper Tribunal as a superior court of record; in many respect the apex of a new system of tribunal justice. As part of the general dispute avoidance rationale internal review is increasingly inserted before or instead of going to a tribunal. There is value in these developments and the ‘new’ model is in principle concordant with the AJTC’s notion of a four-stage cycle of administrative justice; preventing disputes, reducing their escalation, resolving disputes and learning from them (AJTC 2012). However, the overall ethos of recent reforms may be one of reducing the accessibility of tribunals from the perspective of citizen-users in a manner more restrictive than is necessary to achieve proportionate justice.

Within this picture, judicial review is limited to cases raising wide legal and policy concerns, or which disclose serious miscarriages of justice with no other route to redress. Tribunals, with the benefit of being able to re-appraise facts and the application of law, also become much harder to access, and administrative review grows. Administrative justice at the UK (and England) level then starts to look more like the US approach (Asimow 2016) than the ‘tribunal model’ applied in many common-law countries and derived from the UK system. The difficulty here is that we know very little about what longer-term costs and benefits this evolution may bring.

The pressures leading to this morphing of models are not so prevalent within the devolved Welsh tribunals. Whilst reforms are ongoing, Welsh tribunals have not been harmonized into a two-tier structure and, at the time of writing, they are yet to develop sufficiently consistent features to identify a ‘Welsh’ model of tribunals, which can be compared to the ‘old’ and ‘new’ non-devolved models. One reason for this may be their comparatively small case-loads; a challenge for Wales is to ensure that cases are handled by judges and administrators having had the opportunity to develop sufficient expertise.

### *New conceptions of administrative justice*

Conceptions of administrative justice are interpretive; they require us to work back and forth between principles and lived experience (Dworkin 1998). The ‘new’ model of tribunals, and perhaps of broader administrative justice that is developing must be guided and constrained by an underpinning set of principles. Elsewhere I have developed a set of *Administrative Justice Principles for Wales* (Nason 2015, pp.29–47) (the Bangor Principles). These Principles have

been adapted by CAJTW as a serviceable guide to a ‘distinct Welsh approach founded on a belief in social justice’ (CAJTW 2016, pp.43–45). Both Bangor and CAJTW Principles stress that administrative justice (including administrative redress) is not only about the provision of services and dispute resolution, but that relevant modes of engagement between individuals and public bodies are characteristic of approaches to social justice, rights, equality and liberty within a nation (O’Brien 2012).

The Bangor Principles expand upon original ATJC Principles (AJTC 2010), for example by requiring that initial decision-making procedures as well as redress mechanisms should be appropriate, and that the administrative justice system itself should be coherent and consistent and comply with the full set of Principles. Decision-making is required to be effective as well as proportionate and efficient, thus capturing the importance of accuracy and recognising that achieving government policy goals is valued alongside more legalistic provisions. The Bangor Principles specifically require that people be treated as partners in the resolution of their disputes, that decisions are suitably democratic, and that decision-makers act with integrity.

Under the CAJTW Principles ‘everyone has a fundamental right’ to be notified of decisions that affect them, to express views or voice complaints about decisions, and to an appeal or review. To that end, decision-making should comply with certain standards, largely drawn from the Bangor Principles; CAJTW additionally specifies that legislation under which decisions are made should be reasoned and coherent. The CAJTW Principles address ‘systems and procedures’ laying down requirements for appeal and review processes. These draw on the Bangor recommendations that such processes should demonstrate respect for human rights, equalities, sustainability and the needs of the most vulnerable; matters particularly important to social justice in Wales. Both Bangor and CAJTW add that informal dispute resolution should be available where appropriate and that unrepresented parties must not be disadvantaged. This reflects the changing nature of civil justice where alternative dispute resolution is increasingly recommended or required, and where the proportion of litigants in person has grown. CAJTW Principles address ‘values and behaviours’ chief among which are; respecting citizen’s rights and needs, keeping them informed, and parity of Welsh and English in decision-making and redress.

CAJTW recommended that Welsh Government consider the Principles, offer its own proposals for consultation, and publish a final version that will ‘stand the test of time as the cornerstone of a distinctively Welsh approach to administrative justice’ (CAJTW 2016, recommendation 35). In response Welsh Government stated: ‘The proposed principles closely reflect existing values and legislative provisions that inform working practices. The CAJTW formulation will help provide a helpful source of guidance for the Welsh Government’ (Welsh Government 2016b).

## **Reforming the hierarchy**

Not least given the Welsh Government’s cautious response, the best way to take the Principles forward is pragmatically and incrementally. This includes ensuring that *hierarchical* aspects of the Welsh model are updated, streamlined and made more sensitive to the circumstances of Wales including its evolving governance, laws and the context of legal practice.

### *Engaging elected representatives and decision-makers*

Elected representatives are crucial here. CAJTW recommended that professional development in administrative justice issues is made available to Assembly Committee chairs and Assembly Commission staff and that cross-party focus groups be offered to AMs to examine the links between constituency work and administrative redress. It also recommended that the Assembly Commission supports a principled approach to new and existing redress mechanisms and that



a Committee could be nominated to scrutinise devolved tribunals and other ad hoc mechanisms. These recommendations could be set in motion alongside any forthcoming Welsh Government decision to take forward the Law Commission's proposed programme of consolidating and/or codifying Welsh law

A genuine cross-party political commitment is essential to progressing the Law Commission's recommendations; such is also essential to the establishment of new redress mechanisms and their continuing operation. Initiatives should be properly funded with long-term cost implications understood and committed to at the outset.

It has been suggested that trust in government is low across much of Europe, including in the UK (Nason 2015, para. 3.2). In Wales the Williams Commission considered some public service performance to be 'poor and patchy' (Williams 2014, para. 1.52). It also suggested that there was, 'a culture of defensiveness and passivity' in Welsh public services (Williams 2014, para. 4.26). That said, the Report was wide-ranging and complex and identified areas of good practice and examples where public sector performance exceeded the needs of local communities. In response to Williams, Welsh Government outlined a 20-point action plan and set out a 'vision' for public services reform (Welsh Government 2014). This focuses on strengthening the democratic governance and delivery of services by improving leadership and performance management, and by implementing mergers and fostering collaborations, partnerships and the provision of shared services where appropriate. It also stresses that a stronger and more stable devolution settlement should assist in improving public service provision. It is questionable whether the Wales Bill 2016 will achieve this; though one advance is its definition of Welsh Devolved Authorities and non-exhaustive list of such bodies.

Despite progress of the Welsh Government action plan, respondents to Bangor research gave continuing examples of public body defensiveness; most commonly relating to health, education, local government and the police (Nason 2015, para. 3.3). Insights into a forthcoming PSOW report suggest problems often include; a fear or refusal to admit that mistakes have been made; that the person in the department subject to the complaint had a role in formulating the public body's response to it; and a lack of objectivity by senior officers responsible for signing off complaints (Nason 2016a).

CAJTW recommended that leadership training in Welsh public bodies should promote a better understanding of administrative justice, including Local Authority Council members directly involved in decision making (CAJTW 2016, recommendation 4); and that work to strengthen audit, inspection and regulation should be supplemented with work to promote 'right first time' decision making, effective redress mechanisms and organisational learning from complaints and appeals (CAJTW 2016, recommendation 3). Welsh Government responded that it is establishing a new approach to performance management intended to simplify and strengthen existing frameworks to enable authorities to respond to potential performance issues as they emerge (Welsh Government 2016b). CAJTW endorsed Welsh Government's view that a set of shared values should be at the heart of public services provision. Welsh Government is focused on ensuring that citizen voices are heard and that those 'ultimately making decisions on the provision of public services are chosen by, and accountable to, the people who elected them' (Welsh Government 2014, p. 11).

### *The Administrative Court in Wales*

Aside from the Court of Appeal and UK Supreme Court, the Administrative Court in Wales is top of the legal hierarchy of administrative justice in Wales. It has a dedicated Office dealing with the administration of the Administrative Court in Wales, and of Western (England) Circuit claims. Its main workload is judicial review; 89 per cent of its caseload in 2015.

The Court has responsibility for three discrete statutory applications applying only in Wales; an appeal against the decision of the Adjudication Panel for Wales, an appeal against a decision

of the General Teaching Council for Wales, and an appeal against the decision of the Welsh Language Tribunal (WLT). It may be called upon to determine a ‘devolution issue’ after a reference in accordance with the 2006 Act. It also has a listing process that does not apply to Administrative Court Offices in England.

At present a claimant may lodge their application in any Administrative Court Office in England and Wales, even if their case pertains wholly to Wales. The judiciary have made it clear that any Welsh case lodged outside Wales will be transferred to Wales and heard in Wales (Nason 2015, pp. 104–111). Nonetheless, the Administrative Court in Wales does not have absolute jurisdiction over cases pertaining to Wales. Welsh public law is developing differently from that of England at the legislative level, however, general common law principles of good administration remain fused with England, and the Wales Bill 2016 continues to reserve judicial review of administrative action. One wonders for how much longer such a reservation will be democratically and practically desirable; a more federalist solution could be developed whereby Wales has its own laws and procedures of judicial review, including developing nuanced case law principles, but within a floor and ceiling set by the UK Supreme Court.

The Administrative Court in Wales has an *egalitarian* function as a symbol of community and equality (Thornberg 2011); it has played a role in educating the legal profession and the wider public about administrative law and administrative justice in Wales. Pragmatically, the size of government in Wales may make it easier to develop feedback loops between the Administrative Court and government departments, fostering organisational learning.

Though caseloads are small compared to the scale of administrative decision-making, judicial review provides broad insight into the health of an administrative justice system. It is therefore concerning that there has been a decrease in non-asylum and immigration civil judicial review across the Administrative Court and that this reduction has been more marked outside London, including in Wales (Nason 2016b). Fewer judicial review claims are now issued outside London than was the case in 2009 when Administrative Court centres were opened in Birmingham, Cardiff, Leeds and Manchester. This is significantly due to reforms to legal aid and judicial review procedures that seem to have had a disproportionate effect on access to relevant legal services outside London. At least from the claimant side, the market for public law legal services in Wales appears to have shrunk just at a time in the progress of devolution that one might expect it to be expanding. This highlights the weakness of applying market models to the provision of advice services for the most vulnerable and economically disadvantaged. Similarly, whilst there has long been a strong moral and constitutional case for the Administrative Court in Wales, the ‘business’ foundation has been questioned due to the comparatively small caseload. Approximately half of the business of the Administrative Court in Wales originates from England; this has some negative bearing on debates around a separate legal jurisdiction for Wales, including a separate legal profession.

Access to relevant legal advice and assistance, whether from private law firms or increasingly from charities and other voluntary organisations, is crucial both in terms of navigating and making the most of traditional court and tribunal based redress, but also of avoiding it where possible and appropriate. Wales has recently established a National Advice Network (NAN) including an Information and Advice Quality Framework, but incentives are needed to ensure the development of public law legal services; this is difficult when legal aid remains a non-devolved subject.

### *Welsh Tribunals*

Themes of tribunal reform are prevalent across common-law jurisdictions, including merging administration, amalgamating jurisdictions, ensuring independence, clarifying onward appeal rights, and improving user accessibility.

[To ensure the independence of devolved Welsh tribunals, the AJTC Welsh Committee recommended that policy and administrative functions should belong with the Department for the First Minister and Cabinet, as it has no responsibility for any of the government decisions that could be disputed. An Administrative Justice and Tribunals Unit was established within the office of the Permanent Secretary, and remains there at the time of writing, renamed the Welsh Tribunals Unit (WTU).] **[DN: The department is now called the Office of the First Minister and Cabinet Office.]** The WTU currently has administrative responsibility for eight Welsh tribunals and merged administration under its umbrella provides for economies of scale, including the centralisation of back-room staff and the adoption of more effective business models. Work has also been done to achieve greater consistency between devolved tribunals and their HMCTS counterparts. Whilst the WTU does not offer complete independence from Government, similar executive units have operated in other UK devolved jurisdictions as interim arrangements prior to the establishment of an independent tribunals' (or eventually a courts and tribunals') service.

Currently there is a patchwork of onward appeals, some to the Administrative Court and others to the Upper Tribunal (both of which have England and Wales jurisdictions; the Upper Tribunal also has Great Britain and UK wide jurisdiction over some matters). This patchwork is significantly due to the ad hocery of tribunal development as exacerbated by devolution. Welsh Government aims to achieve coherence when establishing new tribunals, especially in relation to appeal routes from new and existing tribunals.

There has been ongoing work to harmonise administration and rationalise tribunal jurisdictions where possible. CAJTW recommended the amalgamation of school admissions and exclusion appeal processes (currently administered by local authorities) with the Special Education Needs Tribunal for Wales, creating an Education Tribunal, however Welsh Government concluded that this was not feasible, most likely due to the different characteristics, caseloads, and modes of operation of the existing bodies.

The Justice Policy Team and the WTU continue to work on a joint reform programme in collaboration with judicial arm's length bodies. For example, in 2015 arrangements were made for the Judicial Appointments Commission (JAC) to conduct tribunal appointments on behalf of the Welsh Ministers, mirroring the arrangement for JAC appointments for the Lord Chancellor. CAJTW recommended that Welsh Government undertake a 'parity test' covering all devolved Welsh appointments, training, appraisal and discipline ensuring that satisfactory standards are in place. However, reforms to judicial contracts in England and Wales are likely to have unique impacts in Wales where the pool of applicants for judicial posts is smaller (Nason 2016a).

There are ongoing reforms to improve user accessibility through information, advice and engagement. The NAN is part of this, as are improvements to tribunal forms, and website content and presentation.

Bangor research and the CAJTW 'Legacy' Report recommend that the Lord Chief Justice appoint an existing Welsh judge to act as Senior Judicial Lead for devolved Welsh tribunals (Nason 2015, para. 7.21; CAJTW 2016, recommendation 7). The 'Legacy' Report recommends the development of Protocols governing relationships between tribunal Presidents, the Senior Judicial Lead (if appointed) and the administration forum to promote greater collaboration, sharing of best practice and administrative efficiencies in tribunal administration. Judicial leadership is a means to progress the identity and working ethos of tribunals (and courts) beyond the simple words of enabling legislation. This has been seen in the case of the Federal Australian Administrative Appeals Tribunal (Creyke 2015 and 2017; Groves 2015 and 2017).

CAJTW recommended that all annual reports of Welsh Government sponsored tribunals be presented to Welsh Ministers, be publicised effectively and made available online. These recommendations relate to stakeholders' concerns about a lack of transparency and consistency

in administration and standards (Nason 2015, Ch.7). Bangor research noted a continuing lack of data, especially about the characteristics and experiences of tribunal users. The benefits of tribunal reforms, such as amalgamation, have been assumed across a range of jurisdictions without empirical evidence (Nason 2015, Ch.7; Creyke 2015 and 2017; Groves 2015 and 2017).

The Wales Bill currently before Parliament makes provision for the status of devolved Welsh tribunals. It defines Welsh tribunals as those having functions that do not relate to a reserved matter, and which are exercisable only in relation to Wales. Devolved tribunals are also listed as Welsh Devolved Authorities, whereas the courts in Wales are not. The ‘justice’ reservation, which includes tribunals, has a specific carve-out for Welsh tribunals, allowing them to remain as fully devolved institutions. At the time of writing, proposed amendments to the Bill would expressly list Welsh Tribunals and establish a President of Welsh Tribunals.

### **Egalitarianism and hierarchy**

Alongside reforming legislative, court, and tribunal *hierarchies*, a more *egalitarian* conception of administrative justice can be fostered by promoting greater harmonisation between traditional hierarchies and bodies involved more in regulation and value promotion (e.g., the PSOW, Welsh Commissioners and civil society institutions).

Protection of the Welsh language provides an interesting case-study raising structural questions about administrative justice and administrative law. The process of establishing the WLT, the form of enabling legislation and the policy behind it, have been criticised. Much of this centres on the role of the Welsh Language Commissioner (WLC) established by the Welsh Language Measure 2007. Some WLC functions emanate from the Welsh Language Act 1993, specifically those dealing with Welsh language planning. Others were conferred by the Welsh Language (Wales) Measure 2011, including the setting of Welsh language Standards. The WLC has own-initiative powers to conduct investigations into matters that raise systematic concerns, was appointed by the First Minister, and is accountable to Welsh Government.

The previous Welsh Language Board was primarily a monitoring body, whereas the 2011 Measure grants a regulatory role to the WLC; namely to set Standards, take steps to ensure that public bodies are complying with them and rectify the situation if not. The 2011 Measure is relatively sparse in relation to what rights individuals have in their interactions with public bodies. As in many jurisdictions it is common for the detail of administrative law to be fleshed out by regulations, or standards developed by government departments and other bodies including commissioners and ombudsmen. However, it is questionable whether such a high degree of discretion is appropriate in the context of protecting language rights in a bilingual nation. Individuals cannot challenge the content of the Standards. The WLC first considers if the relevant Standards, set by her office, have been complied with, if a complainant believes that there has been a flaw in the WLC’s investigation of compliance with her own Standards they can appeal to the WLT. This means that the legislation is primarily addressed to the regulator, and those to whom the regulator is accountable, less so to the individuals whose language rights the legislation ultimately protects or to the public bodies on whom duties are imposed (Huws 2015 and 2017). One alternative is that the WLC should focus on improving the delivery of Welsh language policy and promoting and advocating the use of Welsh, whereas primary legislation could detail specific linguistic rights, with a right of appeal to the WLT. Under the current position language protection takes the format of dispute resolution in a regulatory context, as opposed to being enshrined in concrete legal rights. There are concerns as to how well this meets the needs of individuals, and it is perhaps this focus on dispute resolution over and above rights protection that is most concerning about the ‘new’ model of tribunals and of administrative justice in general.

The independence and accountability of the WLC has also been a matter of concern. Since the WLC is now scrutinising Welsh Government under the Standards, perhaps accountability ought to lie with the Assembly? In other jurisdictions language ombudsmen are often accountable to their respective legislatures. However, one must also look at the comparative functions of these offices. For example, Mac Giolla Chríost notes that the various Canadian language commissioners are more ‘ombudsmenesque’ than the WLC in terms of their function and their approach (Mac Giolla Chríost 2015 and 2017). The former are designed to receive, investigate and report upon, complaints against the executive; they hold the executive to account on behalf of the legislature and are therefore accountable to the legislature. On the other hand, the WLC has a regulatory function with the power to impose civil penalties; in general regulators are accountable to the executive. The difficulty here is that this may compromise the independence of the WLC; the office works as a regulator on behalf of Welsh Government but is also bound by law to monitor the Government’s compliance with the 2011 Measure. This problem can be dealt with partially by considering respective functions; as a House of Lords Review of regulators has put it: ‘Ministers determine policy and regulators put it into effect’ (House of Lords 2007). Though the divide between policy-making and policy-implementation is not absolute, it could be accepted as sufficient in this context.

This leaves the problem that the WLC is responsible for monitoring Welsh Government compliance with relevant Standards. Mac Giolla Chríost proposes that this separation of powers issue might be resolved by removing the individual complaints handling function from the WLC, conferring it instead on the PSOW. The PSOW is already the external and independent complaint-handling body in relation to the Assembly Commission, the body responsible for the day-to-day running of the Welsh language services of the Assembly. This logic could be extended further by empowering the PSOW to handle Welsh language complaints in relation to all Crown bodies and other organisations with similar Crown status. The alternative might be to strip the WLC of regulatory functions, but then Wales would effectively be left with two language ombudsmen without any obvious justification.

It is difficult to precisely delineate the functions of specific institutions; but if functionality alone cannot resolve concerns of principle (e.g., meeting the needs and protecting the rights of citizens, independence and accountability) then checks and balances become increasingly important. Whilst tribunals and courts provide first instance redress to individuals, they also check and balance the powers of other institutions.

The WLT, the first Welsh tribunal to be established by Assembly legislation, has an important role in counterbalancing the WLC’s limited independence from Welsh Government. However, as of June 2013 the First Minister became the holder of the Welsh language policy portfolio, and the Office of the First Minister and Cabinet Office (to whom the WTU is accountable) is accountable to the First Minister. The First Minister was also involved in setting the WLT Rules and these Rules were, as a matter of fact, ‘Made’ by the President of the Tribunal and ‘Allowed’, in the statutory sense, by the First Minister. The WLC acts as an agent of Welsh Government in delivering Welsh language policy whilst at the same time monitoring compliance of Welsh Government with that policy. From the perspective of principle, this situation was not fully resolved by the establishment of the WLT as the same Welsh Government Minister appointed the WLC and the WLT President, (though the latter was through a process agreed with the Lord Chief Justice and the Judicial Appointments Commission), as well as approving the Rules of latter and being responsible for the democratic oversight of it. This Welsh Government Minister also had responsibility for setting the Welsh language Standards upon which the WLT would be called to adjudicate in cases of dispute between that Minister and the WLC. In May 2016, the Welsh Language portfolio was transferred to the Minister for Lifelong Learning and Welsh Language, this is some improvement going forwards, but it does not cure the independence issues arising when the

WLT Rules were made, when the current WLC and WLT President were appointed, or when Welsh language Standards were set.

The WLC, alongside other Welsh commissioners, is part of the so-called ‘integrity branch’ of state, which also includes recent innovations in accountability such as ombudsmen, regulators and auditors. The proposed ‘integrity branch’ spans parliamentary mechanisms of control and executive mechanisms of self-control (Buck et al 2010). A conceptual conundrum is whether this branch is separable from the legislature, executive and judiciary; whilst the institutions comprising it are novel, their powers and accountability are derived from the traditional three branches and therefore contingent upon them. An alternative view is that the integrity institutions are too varied to comprise a coherent fourth branch; instead their hybrid legal-political nature assists in promoting administrative justice as a cross-cutting constitutional principle (Gill 2014). Integrity is however, not the sole preserve of innovative institutions; it must also be exhibited by the traditional three pillars. A more detailed examination of what exactly is meant by ‘integrity’ is required than can be achieved here; but values of fairness, procedural due process, democracy and equality, as enshrined in the Bangor and CAJTW principles, provide a good starting point.

The development of ‘integrity branch’ institutions nevertheless raises the concern that rather than providing additional routes to administrative justice, they may offer thrifty alternatives to traditional court and tribunal-based adjudication over matters of legal right, representing access to justice on the cheap in times of austerity (Nason 2015, para 4.18). Continuing research into their effectiveness is therefore especially important.

In Wales there is no ‘one size fits all’ approach to the roles, accountability and effectiveness of ‘integrity branch’ institutions. For example, the Children’s Commissioner and the Older People’s Commissioner perform functions more akin to National Human Rights Institutions, whereas the WLC is a regulator. Recent research about Children’s and Older People’s Commissioners found that they have a key role of sign-posting people to more relevant sources of assistance (Sherlock and Williams 2015 and 2017). Whilst this may help to plug gaps in advice services or lack of awareness of advice services, it raises questions about the effectiveness and accessibility of existing mechanisms. Should it be the Commissioners’ role to assist people in accessing what ought to be user-friendly procedures, and is this an effective use of resources? It seems that the Commissioner’s capacity to ‘name and shame’ may sometimes have made the difference in cases that were not resolved by local authority internal complaint/review mechanisms. A further question is then how the Commissioners decide which cases to pursue; if they are necessarily selective in doing so this can damage their reputation among specific groups. The same might be said of ombudsmen using own-initiative powers. Research on *What people expect from ombudsmen in the UK* (Creutzfeldt 2015) concluded that people generally have too high expectations of ombudsmen from the outset. Selectivity in which cases to pursue, and confusion over function and accountability, may tarnish the initial image of ‘integrity branch’ institutions as being part of a more *egalitarian* culture.

### **From fatalism to egalitarianism: engaging users**

Reforms to the hierarchy (legislature, courts and tribunals) and the growth of the ‘integrity branch’ are part of improving user engagement with the administrative justice system and facilitating expression of the citizen voice characteristic of a more *egalitarian* model. Wales is also fostering an *egalitarian* culture by reforming approaches to complaint handling across a range of public bodies. This can be seen in health and social care where attempts are first made to secure local and informal resolution, followed by a formal investigation conducted by an independent investigator and a complaint to the PSOW if the other methods fail (The National Health Service (Concerns, Complaints and Redress Arrangements) (Wales) Regulations 2011

and The Social Services Complaints Procedure (Wales) Regulations 2014). Wales was the first UK nation to equate judgement in social work to clinical judgement in health and bring both under the PSOW's remit.

The earlier years of the NHS in Wales concerns process, *Putting Things Right* (PTR), demonstrate how difficult such harmony is to achieve. A wide-ranging review concluded that not enough resources had been made available to allow for the effective management of PTR on a national and local level, and that there were at least ten different versions in play as Trusts and Health Boards had implemented it according to their own budgets (Evans 2014). Navigation through the system, including which point to access and when, and when a complaint reverted to a legal process was not easy for either staff or users to describe. The Report made 109 recommendations about how the NHS in Wales could improve its complaint handling. In response, the Assembly Health and Social Care Committee undertook a further inquiry, and the Minister for Health and Social Services reported that Health Boards and Trusts had begun to take steps addressing issues of resources and leadership, and improving the timeliness of responding to complaints. Other developments include ensuring that the patient's voice is central to the process, with some hospitals piloting a new approach, iWantGreatCare, to capture patient feedback online. Further work has also been done by the National Quality and Safety Forum looking at; information/data and publication of concerns, putting things right guidance and communication, and learning from outcomes. The Minister rejected the recommendation to establish a national independent complaints regulator (what would in effect be a new 'integrity' institution) preferring instead to give the Welsh NHS time to demonstrate improvement in its handling of concerns.

Implementation of the Evans Report must be viewed alongside reforms to improve the quality of services provided by the NHS in Wales, as well as the governance and accountability of relevant organisations and people who manage them. Other proposals include, consideration of a statutory duty of candour to drive a culture of openness and honesty, and further alignment of health and social care complaints processes to provide a seamless service to people wishing to raise concerns (Welsh Government 2015, pp. 4–5).

The PSOW has jurisdiction over concerns and complaints across devolved public services in Wales; a caseload that has increased over the last ten years, not least due to austerity and an ageing population. The draft Public Services Ombudsman for Wales (PSOW) Bill issued by the National Assembly for Wales Finance Committee during the Fourth Assembly includes a provision for own-initiative powers; such are common across Europe and would allow the PSOW to investigate potential systematic failings without waiting for an individual complaint. The PSOW has developed a Model Concerns and Complaints Policy and Guidance, but this is not mandatory, whereas guidance produce by the Scottish Complaints Standards Agency (CSA) in association with the SPSO, is mandatory in relation to listed public bodies in Scotland. The PSOW Bill includes a similar CSA function for the PSOW. Thompson suggests that this could instigate a cultural change under which networks of sector specific complaints handlers take ownership of seeking to identify, share, and apply, insights to improve their services (Thompson 2015 and 2017).

CAJTW recommended that Welsh Government review whether the complaints and appeals system in Wales contains any significant gaps (CAJTW 2016, recommendation 6) and whether some existing standards are being operated in the spirit in which they were made. In response, Welsh Government stated that providing 'for fair, efficient and proportionate systems of dispute resolution is embedded into the...initial stages of the policy assessment process'. However, it accepted that, 'the complaints and appeals system has evolved over time, the network is complex and there is no mapped overview' (Welsh Government 2016b).

### **Avoiding new and opaque bureaucracies**

In many jurisdictions increasing resort to the ‘integrity branch’ comes alongside greater emphasis on administrative rather than legal processes to resolve disputes, avoid escalation and promote learning within public bodies.

The growth of internal and external administrative review is of concern because it remains under-explored, under-regulated, fragmented, and devoid of overarching principles (Thomas 2016). This is true both at the UK and devolved Welsh level.

Mandatory internal reviews are contentious because of their tendency towards a new form of *bureaucratic rationality* in the context of austerity. As with complaints and appeals, there is no specific ‘map’ of the internal review processes operated by Welsh public bodies. Across the UK internal review is most commonly experienced in social security where it is mandatory before a tribunal appeal, and in immigration where it has replaced tribunal and court appeal rights in most cases. Wales has a higher proportion of people claiming some form of in-work benefit than the UK average (Nason 2015, para. 3.25). One would think therefore that Mandatory Reconsideration (MR) in social security cases is a key part of administrative justice in Wales, even if the inertia of the *fatalist* culture tends to suggest lower take up of review processes than seen in other UK nations.

Under MR people aggrieved by government decisions concerned with 22 types of benefits are required to ask for MR (within one month of the date of the initial decision) before pursuing other redress mechanisms. The claimant asks the Department for Work and Pensions (DWP) to reconsider its original decision. Claimants must lodge their appeals directly with HMCTS. The aims of introducing MR include, resolving disputes and correcting decisions as early as possible, preventing escalation thus reducing delays and costs, and reducing unnecessary demand on HMCTS by resolving more disputes internally. MR was contentious from the start with concerns about proposals to withhold benefits whilst the review was underway, the length and fairness of the process, and its impact on dissuading applicants from pursuing meritorious appeals. Following a consultation, the Social Security Advisory Committee (SSAC) produced an Occasional Paper on *Decision Making and Mandatory Reconsideration* (SSCA 2016). Among its recommendations were; the need to review current MR time limits, improving MR notices including signposting appeal rights, review training for decision-makers, improve guidance making it easier to navigate the system, improve communication by use of secure email, and recommendations for specific types of claim especially in relation to medical evidence.

A common cross-jurisdictional problem is that data on the outcomes of various stages of administrative justice redress is often insufficient to be able to assess the quality of specific processes. The SSAC noted that data on MR is limited and that full and robust statistics about success rates and waiting times should be developed. The data problem is particularly acute from the Welsh perspective; where data is available it is often published on an aggregated England and Wales basis. In relation to all aspects of the administrative justice system, Bangor and CAJTW recommended that Welsh data be separately identified and publicised where appropriate (Nason 2015, pp. 6–7; CAJTW 2016, recommendation 33).

The SSAC report refers to a DWP pilot to collect and analyse tribunal feedback. This kind of organisational learning is especially important to a ‘holistic’ understanding of administrative justice. The SSAC recommended improving transparency about how feedback is being used to improve decision-making. In relation to devolved Welsh tribunals and the Administrative Court in Wales, Bangor research suggests that the comparatively smaller realm of governance and caseloads may make feedback loops easier to operate (Nason 2015, Chs.7 and 8); but such processes must be as transparent as possible to ensure trust in the *hierarchy*.

## **Reconstructing administrative justice**



Wales faces challenges in developing a more *egalitarian* conception of administrative justice. Whilst Scotland voted to remain within the EU, a majority in Wales voted for [Wexit?]. This, alongside the election of seven UKIP AMs to the Fifth Assembly, suggests a population increasingly unhappy with current styles of governance. Wales remains vulnerable to UK-wide austerity and the *marketization* of decision-making and redress. The current Wales Bill does not represent a great step forward for Wales both politically and legally. On the wider scale, Brexit, and the growth of nationalism in the US and in some EU nations, may suggest a move away from administrative justice as a global phenomenon with global values. Not least because global administrative law has sometimes been understood as a Western, individualist, liberal and capitalist project (Harlow 2006); part of the *hierarchy* to be dismantled.

Some of these developments reflect that much Anglo-American, legal and political culture remains based on ‘scepticism, deconstruction, and relativism’ (Guest 2012, p.252). However, a new *egalitarian* conception of administrative justice, nascent in Wales, need not exhibit these features. CAJTW and Bangor principles show that we have ideals; the continued search for principled consistency indicative of ongoing reform shows that we have not yet succumbed to the fragmentation of relativism; and our method is constructivist, working incrementally between values and lived institutional experiences.

Adopting a more constructivist methodology is a way forward for administrative justice in general. Our focus should be on incremental studies anchored in empirical socio-legal methods, especially those assessing the effectiveness of newer institutions and procedures. It is from these incremental studies that we can construct new conceptions of administrative justice.

Wales is particularly suited as a petri-dish for trialling new approaches. Chief among these may be to work with the grain of existing institutions, focusing on vertical accountability by emphasising partnerships and feedback loops including at the local government level (where reform is already underway in Wales) (Thompson 2015 and 2017). The PSOW, and to some extent the Administrative Court in Wales, act as ‘one stop shops’, and the smaller scale of governance may allow for more effective communication with the Assembly and Welsh Government departments than can be achieved at a Westminster level.

The broader notion of horizontal as well as vertical ‘holistic’ administrative justice is not lost in Wales. Horizontal in this regard means across all branches of state, and all subject matters of governance. Work is being done to harmonise complaints mechanisms across public bodies. Further efforts can also be made to reduce inconsistency in redress, at least with respect to rights and responsibilities created under devolved powers. CAJTW recommended that Welsh Government introduce guidance and minimum standards for the operation of ad hoc redress schemes ensuring conformity and consistency in principle (CAJTW 2016, recommendation 16). Bangor and CAJTW recommended ‘mapping’ the Welsh administrative justice system, to identify gaps, overlaps, areas of good practice and inefficiencies. This would be best achieved on a ‘sectoral’ (incremental) basis, as has been done for Scotland by the Scottish Tribunals and Administrative Justice Advisory Council (STAJAC 2015). Understanding how to make the best use of lawyers and other advice providers should also be part of this project, as their roles need not necessarily remain as currently perceived.

In many jurisdictions, less traditional routes to accountability are proliferating, especially institutions forming part of the so-called ‘integrity branch’. I believe there is merit in focusing on integrity as the foundation for a vertical and horizontal cross-cutting constitutional principle of administrative justice, or indeed of a constitutional right to administrative justice. CAJTW characterises administrative justice as a ‘fundamental right’ cohering with the AJTC recommendation that any developing British Bill of Rights should include a right to administrative justice. If integrity is foundational, a continued and open conversation about its meaning is required, especially in this ‘post truth’ era. Whilst the work of Ronald Dworkin is often misunderstood, I think integrity should be understood in the Dworkinian sense of aiming

to ensure that citizens are treated with equal concern for their welfare, and with equal respect for their individuality. Everyone has an ‘eponymous public law right to be treated with equal concern and respect, that is to be treated as equal in one’s humanity’ (Nason 2016c, p. 224). It is this understanding of *egalitarianism* that underscores the Bangor Principles and which is therefore carried forward into the CAJTW Principles and related recommendations. Adopting similar principles, reforming traditional hierarchies, making the best use of value-promoting institutions and better engaging users, will assist other jurisdictions in challenging times.

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